

C. Significant Ordering and Provisioning Problems Persist for UNE-P Providers and Associated Performance Data are Misleading.

The comments of AT&T, Birch Telecom, and CapRock Communications describe significant problems with SWBT's wholesale performance in providing CLECs with the UNE-Platform. The problems experienced by these CLECs include frequent service outages upon conversion, inability to service trouble on customer lines, and loss of features such as hunting.⁵⁸ The DOJ's evaluation notes that service outages experienced by UNE-P providers in Texas are a very serious problem and that additional commercial experience is warranted before SWBT's Application is approved.⁵⁹ As recognized by the DOJ, the magnitude of the conversion problems have increased recently and SWBT's reliance on manual processes to handle UNE-P orders makes it *more likely* that as order volumes increase, the scope of these problems will become disproportionately greater.⁶⁰

The DOJ notes that current experience in New York shows that at high order volumes, system problems that increase manual work in the order processing center make it more difficult for an RBOC to timely confirm orders, or to provide reject notices in a timely manner.⁶¹ ALTS and the CLEC Coalition agree with the DOJ that SWBT's order processing center work force

⁵⁸ These difficulties arise from the inability of SWBT to keep each of the three orders involved with the migration of a retail line (C, N, and D) properly related. AT&T Comments at p. 12; when Birch first discussed these issues with SWBT, Birch was told that the problem had been caused by SWBT's manual errors into the RSSO process, the process used to properly relate the three orders. Birch Tidwell and Kettler Affidavit at ¶ 63. For a list of other problems associated with UNE-P ordering, see *Id.* at ¶¶ 63-91; CapRock Communications also noted in its affidavit that although it submits a single order to migrate a line for UNE-P, SWBT separates the single order into three orders. See, CapRock Communications Thompson Affidavit at ¶ 24.

⁵⁹ DOJ Evaluation at pp. 49-50.

⁶⁰ *Id.* at p. 51.

model for November and December 1999, combined with recent events in New York, suggests that “Telcordia did not take into account the degree to which systems problems can overwhelm asserted, but not tested, manual processing capabilities.”⁶²

A very significant issue for CLECs that provide service using UNE-P is the problems caused by SWBT’s triple order process.⁶³ The affidavit of Elizabeth A. Ham describes the ordering process used by SWBT to migrate a SWBT retail customer line to a UNE-P provider, which produces three orders in SWBT’s back end systems.⁶⁴ There are a number of problems associated with SWBT’s three order conversion process, including loss of dial tone, an inability to make outbound calls, fall out of directory listings, loss of certain vertical features, loss of multiple line hunting⁶⁵ and double billing.⁶⁶ These problems were so extensive for Birch last

⁶¹ *Id.* at p. 52, citing New York PSC Order at 3 and DOJ Ex. 4.

⁶² *Id.* at fn 144, p. 52. The LSC is responsible for generating the C, N, and D orders on many LSRs and for updating the orders when a CLEC submits a supplementary LSR after customers request a new due date. If the LSC unsuccessfully changes the due date for all three orders, or fails to input the proper code to coordinate the orders, the orders will complete at different times and a service outage may occur. AT&T Comments at p. 11.

⁶³ Although only UNE-P providers’ orders are split by SWBT into three orders (D-Disconnect, N-New and C-Change), orders by UNE-L providers are similarly split into two orders (Disconnect and Change) and result in the same types of problems experienced by UNE-P CLECs, e.g., service outage, double billing, etc. The multiple orders problem was discussed in the initial comments of the CLEC Coalition at pages 27-28.

⁶⁴ *See*, SWBT Ham Affidavit at ¶ 196.

⁶⁵ For instance, Birch was made aware that it was receiving an unusual number of trouble tickets related to failures associated with a customers’ hunt groups. Ultimately, SWBT confirmed that the root cause was a new software upgrade to SWBT’s legacy system that was made without any prior notification to CLECs that an upgrade had been made. Birch Tidwell and Kettler at ¶¶ 81-85.

⁶⁶ DOJ Evaluation at p. 50. Frequently, Birch customers complain because they are still being billed by SWBT although their local service has been turned over to Birch. The problem appears to be that SWBT is not processing the “D” order to completion until long after the “C” Order has been completed, preventing SWBT from updating its billing database. Birch Tidwell Affidavit at ¶¶ 63-91.

year that they were forced to file a complaint with the TPUC in order to seek relief.⁶⁷ Commercial experience suggests that SWBT is unable to maintain a logical relationship among the three orders to ensure that the orders process in tandem and in the proper sequence.⁶⁸

Only CLEC orders are subject to the triple order process and that this process significantly increases the likelihood of loss of features, billing problems and service outages.⁶⁹ Neither Telcordia nor SWBT have been able to show that SWBT's retail orders are subject to the same service-affecting triple order process.⁷⁰ While SWBT in the past has blamed problems associated with converting lines to UNE-P providers on CLECs, claiming that they were providing incorrect address information, in fact, there is complete concurrence among CLECs that address discrepancies alone have nothing to do with the problems stemming from SWBT's

⁶⁷ Although Birch initially tried to resolve these issues informally, after Birch experienced loss of dial tone for its customers for more than two consecutive months, Birch was forced to file a complaint with the TPUC. *See*, Birch Tidwell and Kettler Affidavit at ¶63, Attachment B. Incredibly, the TPUC states in footnote 298 of its Evaluation that it is unaware of further evidence reflecting service outage problems experienced during UNE-P conversions. However, as evidenced by the meeting minutes and hearing transcripts provided as Attachments D, M, T, AA and T to the Birch Tidwell and Kettler Affidavit, the problems resulting from the C, D., and N order process, including service outages and directory listing fallout, are ongoing problems of which SWBT is fully aware.

⁶⁸ *See*, Birch Tidwell and Kettler Affidavit at ¶¶ 48-57; in many cases, problems with the “N” or “C” orders caused CapRock’s orders to be delayed or rejected, yet the corresponding “D” order was not held. As a result, CapRock end users had their service disrupted, and were left with absolutely no service. CapRock Communications Thompson Affidavit at ¶ 25.

⁶⁹ Birch Tidwell and Kettler Affidavit at ¶ 55.

⁷⁰ The only realistic solution to the problems associated with converting lines to UNE-P may be to eliminate the three order process, for the same reasons that SWBT eliminated the two order process for resale orders. AT&T Comments at p. 13; recently, SWBT contended that any system fix that would prevent orders from being disassociated would delay necessary system fixes for LIDB. Thus, SWBT seeks to force CLECs to choose which service-affecting problem they want fixed, regardless of whether both system fixes are necessary and mission critical. Birch Tidwell and Kettler Affidavit at ¶ 68.

triple order process.⁷¹ Rather than simply transferring the correct address information to all three orders, SWBT transfers the address from the LSR to the “C” order, but populates the “N” and “D” orders with addresses obtained from a database upload.⁷² There is no evidence in the record that SWBT’s retail processes undergo this type of deconstructing and reconstructing process.⁷³ Therefore, to the extent SWBT’s retail processes are not subject to the service-affecting triple order process, SWBT’s wholesale service to CLECs is not being provided at parity.⁷⁴ The problems experienced by CLECs in the provisioning of UNE-P orders clearly further demonstrate SWBT’s problems in processing multiple orders and its inability to provide nondiscriminatory access to OSS and to provision UNEs in a nondiscriminatory manner.

As shown by the Birch Tidwell–Kettler affidavit, SWBT’s performance measurement data reflects better than actual performance as a result of SWBT’s three orders conversion process. For Birch’s Texas data, where Birch uses only UNE-P, the flow through performance data for Birch reflects an inflated level of performance. SWBT’s demonstration of the data in its

⁷¹ As noted by CapRock, most CLECs request a customer service record (“CSR”) before submitting an LSR to SWBT to request service for their customers. CapRock has found that the CSRs often do not contain complete or accurate information regarding the customer’s current service arrangements, creating significant problems once SWBT disconnects and reestablishes the service. These problems result in services not functioning properly and it may take days or weeks to identify and eliminate the problems. CapRock Communications Thompson Affidavit at ¶¶ 27-29.

⁷² The problems of improper address input compounds the problems associated with the three orders becoming disassociated. See AT&T Comments at p. 12.

⁷³ In CapRock Communications Thompson Affidavit at ¶ 30 “Because only CLEC orders are processed using the CSR information, errors in the data discriminatorily impact CLECs. Moreover, if not for SWBT’s refusal to migrate service ‘as is’ and its decision to ‘disconnect’ existing service before installing new service using UNEs, the problem would not exist at all.”

⁷⁴ SWBT identified at least seven areas that represent potential processing problems associated with the three order process during the User Forum meeting December 1999. SWBT did not explain many of the problems, nor did they propose solutions. AT&T Comments at pp. 12-13.

Application is misleading, and SWBT inaccurately concludes that this triplicate order process is nondiscriminatory. SWBT notes that the percentage of trouble reports for UNE-P data is less than the trouble reports for all data and the trouble reports issued related to UNE-P orders is lower than that for SWBT.⁷⁵

SWBT's data provides an inaccurate picture of SWBT's performance because not all consequences of the three order process are captured by PM No. 65, "Trouble Report Rate." Examples of SWBT's performance that is not captured include, LIDB records in conflict status, double billing problems, and Call Notes disconnections. Also, SWBT's Trouble Report Rate excludes "Disposition 13 reports" (no trouble found – NTF)). Unfortunately Birch cannot quantify or confirm whether SWBT is overusing this category because Birch's Trouble Reports frequently cannot be viewed due to the fact that the "D" order has not posted.⁷⁶ In addition, SWBT will not release Birch's performance measurement source data to enable Birch to verify SWBT's statistics until Birch executes the T2A. Further, the performance measures do not capture other situations such as when a customer decides to switch its local service provider from SWBT to Birch and information on the customer service record ("CSR") is incorrect. A CLEC must rely on SWBT's CSR to order service that mirrors that which was being provided by SWBT. Detailed information, including any conditioning on the line, is not on the CSR. As a result, when the service is provisioned according to the service that the customer selects, SWBT classifies any trouble as "CLEC error" and does not count the resulting trouble reports in its performance measurements.

⁷⁵ Ham Affidavit at ¶ 201.

⁷⁶ See, Ham Affidavit at ¶ 224.

III. Checklist Item (iv) – Unbundled Local Loops.

As recognized in the DOJ's Evaluation and discussed in the initial comments of ALTS and the CLEC Coalition, SWBT's performance providing hot cuts and DSL-loops clearly shows that it has not met this checklist item.

A. Hot Cuts.

1. Frame Due Time.

Based on the inadequacies of its filing and commercial experience in Texas, CLECs have concluded that SWBT is unable to show that it can consistently, reliably provision loops.⁷⁷ Currently, SWBT provides two methods of conducting a transfer of service on a line that is in use: Coordinated Hot Cuts ("CHC") and Frame Due Time ("FDT"). To monitor SWBT's performance regarding the cutover of loops, two performance measures are employed: (1) PM No. 114 for premature cutovers, and (2) PM No. 115 for delayed cutovers that occur outside the allowable window for the disconnection and transfer of service. With regard to both of these metrics, SWBT claimed in its Application that it was meeting the performance benchmarks.⁷⁸

In its January 21, 2000 *Ex Parte* Submission, SWBT reported an increase in the number of FDT cutovers for December 1999. The increase in the number of FDT cutovers occurred at SWBT's suggestion, owing to the fact that so many problems were occurring in conjunction with CHCs. Despite the use of this agreed upon method for performing cutovers, SWBT failed to follow its own procedures at least 30% of the time for the months of October to December 1999,

⁷⁷ SWBT's December 1999 *ex parte* data revealed that only 51% of CHCs were performed in 30 minutes or less. CompTel Comments at p. 15. See, Comments of AT&T, CLEC Coalition, and CapRock Communications.

⁷⁸ SWBT Dysart Affidavit, Attachments A, at pp. 137-138 and R, at p. 29.

creating service problems for CLECs.⁷⁹ Even more worrisome is the fact that SWBT still continued to prematurely cutover some customers' service one or more days *before* the designated frame due time.⁸⁰ At SWBT's insistence, AT&T conducted a limited test of FDT in August 1999, and found that provisioning errors caused by SWBT negatively impacted 53% of AT&T's customers.⁸¹ Once a root cause analysis was performed, it was determined that SWBT's poor provisioning was due primarily to SWBT's failure to train its central office personnel on methods and procedures applicable to the FDT process.⁸²

2. Coordinated Hot Cuts.

The provisioning of loops using CHC by SWBT is certainly not any better than its use of FDT. Despite the fact that PM Nos. 114 and 115 address only premature and delayed cuts, not defective cuts,⁸³ there is much evidence in the record to support the conclusion that SWBT's coordinated hot cut procedures are not commercially ready and are far below the performance of Bell Atlantic. Even when SWBT agreed with ICG that as a general matter a "lift and lay" should take around 15 minutes per line, SWBT has not been able to perform within this general constraint. As a matter of commercial practice, ICG has experienced tremendous inconsistencies with SWBT's cutovers, including customers with as few as eight lines being without dial tone for

⁷⁹ See, CompTel Comments at pp. 15-16. CapRock Communications determined that in violation of SWBT's procedures, SWBT often prematurely cut over CapRock customers in advance of the designated frame due time. CapRock Communications Thompson Affidavit at ¶ 19.

⁸⁰ *Id.* at p. 16.

⁸¹ AT&T Comments at p. 31.

⁸² *Id.*

⁸³ Defective cuts may generally be considered to be those cuts that continue in duration longer than would be indicated by industry standards.

eight hours.⁸⁴ AT&T and MCI have found that for the period of August through October 1999, SWBT was unable to provision CHCs in a manner consistent with this Commission's mandates.⁸⁵ In addition, NEXTLINK frequently receives SWBT facilities that are not even operational when delivered, essentially preventing NEXTINK from properly provisioning its customers.⁸⁶ More importantly, it does not appear that SWBT has implemented concrete, systemic changes to insure that current problems with CHC procedures are resolved.⁸⁷

B. SWBT's Application Fails to Demonstrate that it is Providing DSL-Capable Loops on a Nondiscriminatory Basis as Required by the FTA.

Utilization of existing copper loops to provide broadband services through DSL technology offers a significant opportunity to make advanced services widely available to small business and residential customers. Covad, Rhythms and NorthPoint recognized this market opportunity early on, before SWBT made its ADSL service available, but these competitors' ability to serve this market requires access to SWBT's copper loops. One of the weakest aspects of SWBT's 271 Application concerns SWBT's record in provisioning DSL-capable loops. Indeed, ALTS and the CLEC Coalition, as well as most DSL providers, consider this weakness to be so great that the Application must be denied.

Comments filed by DSL providers and by the DOJ point out in detail the errors and inadequacies in SWBT's performance data and Telcordia's obvious failure to rigorously examine

⁸⁴ See, Initial CLEC Coalition Comments at pp. 41-42 and ICG Rowling Affidavit at ¶ 23.

⁸⁵ See, AT&T Comments at pp.32-33; during UNE-L testing, MCI demonstrated the existence of numerous CHC problems that included loss of dial tone and failed disconnects. These problems occurred with a very small number of orders and clearly do not suggest that SWBT is capable of performing these procedures in an acceptable manner in the context of commercial volumes. MCI Comments—Joint Affidavit of McMillon & Sivori, ¶¶ 177 and 178.

⁸⁶ See, Initial CLEC Coalition Comments at p.42 and NEXTLINK Barron Affidavit at ¶¶ 24-26.

⁸⁷ See, MCI Comments at p. 28 discussing the fact that MCI experienced significant problems with the CHC process.

SWBT's DSL-loop ordering and provisioning processes. The presence of these problems alone would warrant particular Commission scrutiny of DSL-loop provisioning. When combined with SWBT's historical record of delay and obstructionism in dealing with DSL competitors, the need to delve beyond the glib assertions in SWBT's affidavits becomes imperative. It is SWBT's actual performance that must be found to satisfy checklist item (iv) if SWBT's Application is to be approved. As several parties noted in their Comments, SWBT cannot rely on its non-operational affiliate to show compliance with this portion of the checklist. A close look at SWBT's performance in this area reveals both significant problems and a lack of reliable data that preclude a finding that SWBT has met its checklist obligations with respect to DSL-capable loops.

1. SWBT's Performance Does Not Satisfy the Obligation to Provide Nondiscriminatory Access as Required by Checklist Item (iv).

There are two means by which SWBT could demonstrate that checklist item (iv) is satisfied—submission of comprehensive and accurate performance metrics showing nondiscriminatory access to DSL-capable loops or creation of a fully operational separate affiliate that will provide advanced services, thereby preventing discrimination.⁸⁸ The Commission's stated preference is for "a record that contains data measuring a BOC's performance pursuant to state-adopted standards that were developed with input from the relevant carriers and that include clearly-defined guidelines and methodology."⁸⁹ These measures should include "for instance, the average completion interval, the percent of installation appointments missed as a result of the BOC's provisioning error, the timeliness of

⁸⁸ See, Bell Atlantic New York Order, ¶¶ 330-331. It should be noted that the FCC's Order states that a fully-operational affiliate "may provide significant evidence" of nondiscrimination. Thus, the mere presence of a fully operational affiliate, by itself, is no guarantee that the BOC's conduct is nondiscriminatory.

⁸⁹ *Id.* at ¶ 334.

order processing, the installation quality of xDSL loops provisioned, and the timeliness and quality of the BOC's xDSL maintenance and repair functions.”⁹⁰

The TPUC, SWBT and the parties all have expended great efforts to develop performance measures that would reveal whether SWBT's provision of service to its competitors satisfies the checklist requirements of the FTA. For many of the individual measures, reported data indicate SWBT's compliance, but for the measures dealing with SWBT's provision of DSL-capable loops this is not the case.

a) The Performance Data on which SWBT Relies are Inherently Flawed.

NorthPoint and Covad contend that the data on which SWBT's performance measures are calculated are wrong. NorthPoint states, for example, that its review of data filed by SWBT in its Application and in the performance reports SWBT provides to NorthPoint show that “key performance metrics are based on erroneous and inconsistent data that undermine their value substantially.”⁹¹ Among the specific errors NorthPoint identifies are (1) SWBT's report that NorthPoint has ordered *zero* DSL-capable loops, when in fact NorthPoint has ordered more than 1,000 such loops, and (2) SWBT's report that all CLEC orders totaled 164 DSL-capable loops between August and December, while SWBT purportedly received 2,019 requests for loop makeup information during this same period.⁹²

Covad states that the performance measures for return of FOCs and average installation time exclude half or more of Covad's orders.⁹³ Covad's comparison of SWBT's reported performance under PM No. 5, PM No. 55.1 and PM No. 57 and Covad's actual results indicates

⁹⁰ *Id.*

⁹¹ *See*, NorthPoint Comments at p. 8.

⁹² *Id.* at pp. 9-10.

⁹³ *See*, Covad Comments at pp. 20-21.

that the failure to include all of Covad's orders has the effect, intentional or not, of significantly improving SWBT's claimed performance.⁹⁴ SWBT reports performance levels for PM No. 5-17 (UNE Loop FOCs Received-Manual) ranging from 63.5% to 97% returned within 24 hours during the September-December 1999 period, while Covad's actual experience ranged from an abysmal 11.47% to a mediocre 64.66%.⁹⁵

ALTS and the CLEC Coalition find the omission of DSL-capable loop orders extremely troubling. Moreover, the huge disparity between SWBT's reported performance and Covad's actual experience shows that something fundamental is wrong. Absent further analysis of the data and the sources of this disparity, it is impossible to consider SWBT's reports an accurate indicator of its performance.

b) The Calculation of at Least One Performance Metric on which SWBT Relies is Flawed Because It Omits Key Information and Has Subsequently Been Revised.

In its Comments, NorthPoint states that SWBT's calculation of the time frames on which an essential performance measure is based omitted activities that for NorthPoint had been sources of delays. Performance Measure No. 57 (Average Response Time for Loop Qualification) originally was defined by SWBT as starting when a SWBT employee began the internal process of loop qualification and ended when that process was finished, thus omitting completely the time between receipt of a CLEC's order and SWBT's employee beginning the qualification process as well as the time between conclusion of that process and delivery of the information to the CLEC.⁹⁶ As DOJ's Comments note, SWBT has known since the Commission's Order approving the SWBT/Ameritech merger that defining the measure in this manner was wrong.⁹⁷ The Commission's Order specifically states that the time starts when a

⁹⁴ *Id.* at pp. 27-31.

⁹⁵ *Id.* at p. 28.

⁹⁶ *See*, NorthPoint Comments at p.11.

request is received by the ILEC and ends when the information on the loop qualification has been made available to the CLEC.⁹⁸

c) SWBT's Performance Indicates that Significant Inequalities Exist.

Mr. Dysart's Affidavit shows that, contrary to SWBT's assertions, its performance has been less than stellar when compared to its contractual obligations. For example, PM No. 55.1 (Average Installation Interval) shows that in November 1999 DSL-loop installations in Houston took an average of 11 days, while conditioned DSL-loop installations took an average of 31 days; both of these intervals significantly exceeded SWBT's contracted for time frames of 7 and 15 days respectively.⁹⁹ Mr. Dysart's explanation, that CLECs request due dates beyond the 7- and 15-day intervals, is improbable given customer desires to obtain communications services in the shortest possible time.

Covad's experience suggests that SWBT's loop qualification process may be the cause of the delay.¹⁰⁰ According to Covad, SWBT's internal spectrum management standards that apply to its own ADSL retail offering work against CLECs' orders by causing them to be rejected, and then requiring the CLECs to request another, subsequent due date.¹⁰¹ If so, not only are the data skewed and thus unreliable, but the loop qualification process itself raises questions as to SWBT's nondiscriminatory treatment of its competitors. In particular, proof of SWBT's compliance with the TPUC's order to cease using its spectrum management plan becomes necessary.

⁹⁷ See, DOJ Evaluation at p. 12.

⁹⁸ See, SBC/Ameritech Merger Order, App. C, Attachment A, at A-34.

⁹⁹ See, NorthPoint Comments at pp. 12-13.

¹⁰⁰ See, Covad Comments at p. 30.

¹⁰¹ See, Covad Smith Declaration.

DOJ notes in its Comments that SWBT submitted corrected data for PM No. 55.1 on February 1, 2000, but failed to note that changes in the data had been made or explain the reason for the revisions or the actions it was taking to detect other such errors.¹⁰² DOJ also observed that performance data for individual CLECs had not been supplied to them, thus there is still no assurance that even the corrected data are accurate.¹⁰³

Examination of other performance measures shows a lack of parity between SWBT's own services and the treatment accorded to CLECs. For example, PM No. 58-9 (SWBT-Caused Missed Due Dates) for DSL-loops and PM No. 58-13 (SWBT-Caused Missed Due Dates) for dark fiber show significant out-of-parity situations.¹⁰⁴ In addition, performance measures for trouble reports on installed DSL-loops and for missed due dates for lack of facilities show a similar and disturbing lack of parity.¹⁰⁵ Data for PM No. 59 for December 1999 show trouble reports at a 15.8 % for CLECs and only 5.2 % for SWBT retail lines (more than three times higher for CLECs); data for PM No. 65 for the same month show repair rates of 7.7 % for CLECs and 4.6 % for SWBT.¹⁰⁶ And, there appears to be a clear trend of deteriorating SWBT performance as the number of DSL-loop orders increase, despite the fact that commercial volumes have yet to be attained.¹⁰⁷

ALTS and the CLEC Coalition agree with the DOJ and other commenters that, if SWBT's performance data prove *anything* with respect to DSL-capable loops, it is that competitors are seriously disadvantaged in their efforts to serve their customers. ALTS and the

¹⁰² See, DOJ Evaluation at p. 16.

¹⁰³ See, *Id.*

¹⁰⁴ See, *Id.* at p. 18 and Covad Comments at p. 39.

¹⁰⁵ See, Covad Comments at pp. 39-42.

¹⁰⁶ See, DOJ Evaluation at p. 20.

¹⁰⁷ *Id.* at pp. 20-23.

CLEC Coalition are very concerned that this situation will grow worse rather than better if SWBT's Application is approved.

d) The Manual Processes on which SWBT Relies for Handling CLEC Orders for DSL-Capable Loops Cause Errors and Delays that Impair CLECs' Ability to Provide xDSL Services and These Problems Do Not Show Up In Performance Data.

As stated above, and as discussed in detail in the affidavits submitted with Covad's and NorthPoint's Comments, SWBT's ordering and loop qualification process erroneously rejects orders for loops that do not meet SWBT's internal standard for loop length limitations, requiring needless resubmission of orders.¹⁰⁸ While these problems significantly diminish CLECs' ability to serve their customers, they are not tracked by the performance measures themselves nor are they apparent in the business rules on which the underlying data are collected and performance calculated.

2. The Mere Existence of a Non-Operational Advanced Services Affiliate Does Not Satisfy the Requirements the Commission Has Established.

SWBT asserts in its Brief that its advanced services affiliate, ASI, satisfies the Commission's alternative means of showing that it is offering nondiscriminatory access to DSL-capable loops.¹⁰⁹ ASI was not operational in Texas at the time SWBT's Application was filed, however, with the result that there are no data or information on its activities and interaction with SWBT in this record.

The Commission was specific in requiring that the advanced services affiliate be an operational reality. Its directive to BOCs filing applications subsequent to Bell Atlantic's Application for New York, states that the Commission expects "a separate and comprehensive

¹⁰⁸ See, NorthPoint Comments at p. 14 and Covad Comments at pp. 30-31.

¹⁰⁹ See, SWBT Brief in Support of Application at p. 43.

showing with respect to the provision of xDSL-capable loops, either through proof of a *fully operational advanced services separate affiliate* . . . or through a showing of nondiscrimination in accordance with the guidance provided herein.”¹¹⁰ There can be no comprehensive showing of nondiscrimination if the affiliate exists only on paper and has no tangible experience with the ordering, provisioning, and maintenance functions the BOC performs for its wholesale customers. Indeed, it would be nonsense to require, on the one hand, that SWBT submit evidence of its compliance with detailed performance standards while on the other hand permitting SWBT to merely create a legal entity to be its advanced services affiliate. The Commission could never have intended such contradictory options. If the existence of an affiliate is to provide assurances of nondiscriminatory treatment, it must be real.

In this case, SWBT’s affiliate was not real at the time SWBT’s Application was filed. ASI had ordered no services and received no loops from SWBT in January, 2000. SWBT’s own submission shows that ASI will not become operational in Texas and will not use the OSS available to other CLECs in Texas until February 28, 2000.¹¹¹

Furthermore, as AT&T’s Comments show, ASI is not sufficiently “separate” to ensure that CLECs are or will be receiving nondiscriminatory treatment.¹¹² No one looking at the list of services SWBT has contracted to provide to ASI could conclude that ASI is operating anything like an independent entity. ASI obtains marketing and ordering services, purchasing services, network planning and engineering, and installation and maintenance services from SWBT.¹¹³

¹¹⁰ See, Bell Atlantic New York Order at ¶ 330 (emphasis added).

¹¹¹ SWBT Brief at p. 44; SWBT Brown Affidavit at ¶ 5.

¹¹² AT&T Comments at pp. 25-27.

¹¹³ Specific agreements listed on SBC’s web page include the following: Executive Customer Contact Services; Customer Services Support; Premise Sales Support; Residence Service Support; Operations, Installations and Maintenance; Non-Management Staffing; Installation and Maintenance; Affiliate Insert in Telco Bill; Technical Support Services; and Network Planning and Engineering. (sbc.com/PublicAffairs/PublicPolicy/Regulatory/swb 2asbc_nts)

Based on the evidence in the record, SWBT cannot rely on its creation of ASI to support its entry into the long distance market.

IV. SWBT Relied on Inadequate Performance Measures.

Certain performance measures used by SWBT are inadequate to support its Application. Where the performance measures do not support the required demonstration for a particular checklist item, this Commission has concluded that the Applicant must do more to meet the burden of proof.¹¹⁴ SWBT has failed to make the required showing.

Specifically, with respect to the checklist items for coordinated hot cuts, unbundled loop provisioning, receipt of service order completions, and the provision of UNEs, SWBT's performance measures fail to demonstrate that SWBT offers these services in parity with SWBT's provision of the services to itself. SWBT's failure to provide these checklist items in parity with its own services means that CLECs are deprived of a meaningful opportunity to compete in the market. The Evaluation of the DOJ points out the deficiencies in the performance measures used by SWBT.¹¹⁵

Regarding hot cuts, the performance measure data submitted to the TPUC by SWBT did not include a measure of the time it took for completion of a hot cut procedure.¹¹⁶ CLECs have experienced significant difficulty in SWBT successfully completing hot cuts on a timely basis.¹¹⁷ Performance Measure No. 114 measures premature hot cuts, and PM No. 115 measures hot cut delays, no performance measure is available to demonstrate the total time required for

¹¹⁴ See, Bell Atlantic New York Order at ¶ 55 and 56.

¹¹⁵ See generally, DOJ Evaluation.

¹¹⁶ See, SWBT Dysart Affidavit at ¶ 659 and SWBT Conway Affidavit at ¶ 87.

completion of a hot cut procedure. In response to this recognized deficiency, SWBT has promised to implement an interim performance measure, PM No. 114.1, to measure the duration of a hot cut. However, SWBT has designed this new measure to record the time for SWBT internal processing, it does not include the time necessary for SWBT to notify the CLEC of the completion of the cut, which information is critical to determine SWBT's performance. This notification is necessary for the end use customer to receive fully functional service.¹¹⁸

There is no performance measurement to account for the accuracy of the type of service associated with unbundled loop orders. Incorrect provisioning of unbundled loops is a chronic problem which is encountered by CLECs on virtually a daily basis.¹¹⁹ The experience of CLECs attempting to provide service in the market shows that SWBT has consistent problems with loop provisioning. For instance, SWBT incorrectly logs loops as accepted by CLECs prior to testing and verification by the CLEC.¹²⁰ CLEC experience reveals repeated instances where SWBT has failed to deliver the correct number of loops and even instances where no loops have been provisioned, while the SWBT technician incorrectly has logged the loops as installed.¹²¹ In these instances, where the loops are inadequately provisioned or not provisioned at all, the CLECs' only recourse is to submit a new order.¹²² The performance measures do not capture this systemic and critical flaw in SWBT's provision of unbundled loops.

¹¹⁷ See, ICG Rowling Affidavit at ¶ 23; See also, NEXTLINK Barron Affidavit at ¶ 26.

¹¹⁸ See, DOJ Evaluation at p. 32, citing AT&T DeYoung Hot Cuts Declaration.

¹¹⁹ See, ICG Rowling Affidavit at ¶ 26.

¹²⁰ *Id.* at ¶ 23.

¹²¹ *Id.* at ¶ 24.

¹²² *Id.*

In addition, SWBT has not provided a sufficient measurement of the response time for loop qualification. SWBT's reliance on PM No. 57 to demonstrate its performance regarding the time it takes to conduct loop qualification work is insufficient. Performance measure No. 57 includes only the time period during which the SWBT technician worked on the loop qualification request.¹²³ This performance measure is inadequate because it does not include the more important time period from the time SWBT receives the CLEC's request to the time it takes SWBT to respond to the CLEC that the request was completed.¹²⁴ This is the type of common sense information that CLECs and the TPUC need to determine timelines of SWBT's loop make-up work. Thus, SWBT performance measures do not demonstrate that SWBT provides loop qualification information to CLECs in parity with its retail division.¹²⁵

In attempting to use the LEX system, CLECs have experienced problems with receiving service order completions ("SOC") that are not captured by any performance measure used by SWBT.¹²⁶ Performance Measure No. 7.1 measures the time between the completion of an order and when the SOC is received by the CLEC.¹²⁷ However, this measure does not capture those repeated instances where SWBT fails to even present an SOC.¹²⁸ The failure to return a SOC, which is not reflected in any existing performance measure, prevents CLECs from having a meaningful opportunity to compete for a number of reasons, including, the fact that when a SOC

¹²³ See, DOJ Evaluation at p. 12 – 13.

¹²⁴ *Id.*

¹²⁵ *Id.*; also see Comments of NorthPoint, Covad and Rhythms.

¹²⁶ *Id.* at ¶ 37.

¹²⁷ *Id.*

is not provided to the CLEC, the customer's 911 records remain locked in SWBT's systems preventing SWBT from migrating the customer from SWBT to their chosen CLEC.¹²⁹ Also, when SWBT does not return a SOC, the customer often continues to be billed by SWBT, although the customer is now a CLEC end user.

V. A Reasonable Degree of Market Certainty is Essential to an Open Market.

The TPUC correctly notes that many of SWBT's 271 commitments are embodied in the T2A interconnection agreement.¹³⁰ According to a recent SWBT filing in Project 16251, over 60 CLECs have entered into the T2A.¹³¹ Birch Telecom and several other members of ALTS have taken the T2A and are greatly concerned about the fact that the agreement will expire in October of this year if SWBT's 271 Application is not granted by the Commission. This "one year with a three year extension if 271 relief is granted" scenario is the result of the TPUC's Memorandum of Understanding with SWBT, not negotiations with each CLEC. However, the TPUC has consistently premised its support for SWBT's Application on the T2A being a four-year agreement. The CLECs that have taken the T2A are implementing their business plans and network operations based on the terms of their agreement with SWBT and, if SWBT's Application is denied, need such agreements to continue in effect for the full four-year period contemplated by the TPUC. ALTS and the CLEC Coalition expect that the deficiencies in SWBT's Application can be corrected and a new application could be filed and granted in the

¹²⁸ *Id.*; also *see*, DOJ Evaluation at fn 114.

¹²⁹ *Id.* at 38.

¹³⁰ TPUC Evaluation Comments at p. 30.

¹³¹ Reply of SWBT to Comments filed Pursuant to Order No. 61, TPUC Project 16251, February 17, 2000, p. 2.

near future. Whatever the Commission ultimately determines about whether SWBT is currently in compliance with 271, the Commission must make clear that SWBT's refusal to make the agreement a four-year agreement even in the absence of FCC approval is not acceptable. The Commission's decision on SWBT's Application should ensure that the T2A is available for the full four years contemplated by the TPUC.

CONCLUSION

Ensuring that a local exchange market is irreversibly open to competition is an enormous responsibility. Without question, SWBT has made significant strides in opening its local markets in Texas. But it has not yet crossed the finish line. Before SWBT is granted 271 relief, the Commission must ensure that SWBT's performance is being correctly captured and reported and that unbundled local loops are being provided timely and accurately.

SWBT's Application suffers from discrete and identifiable failures to implement the FTA's 271 checklist items. SWBT's OSS evidence reveals serious shortcomings which prevent SWBT from providing its operational systems to CLECs at parity. SWBT has significant problems with the provision of UNE-P and hot cuts. More importantly, these problems, and others, were identified by CLECs, Telcordia, and the TPUC as significant customer-affecting problems. SWBT's problems are systemic. These problems must be resolved **prior to** SWBT obtaining section 271 authority.

Joint Reply Comments of ALTS and the CLEC Coalition
SBC – Texas

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By:

A handwritten signature in cursive script, appearing to read "Robin Casey RAB", written over a horizontal line.

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Attorneys for ICG Communications, Inc.;
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In the Matter of)	
)	
Application by SBC Communications Inc.,)	
Southwestern Bell Telephone Company,)	CC Docket No. 00-04
And Southwestern Bell Communications)	
Services, Inc. d/b/a Southwestern Bell Long)	
Distance for Provision of In-Region)	
InterLATA Services in Texas)	

STATE OF TEXAS)
)
COUNTY OF DALLAS)

I, Lea J. Barron, being of lawful age and duly sworn upon my oath, do hereby depose and state as follows:

- 1

joining NEXTLINK, I worked at Allegiance Telecom for approximately one year as quality control manager for operations.

3. Many of the FOCs received by NEXTLINK through SWBT's EDI process in January 2000 were followed by jeopardy notices. This indicates that the processes that provide FOC return do not check all of SWBT's internal systems on an automated basis. Apparently, when SWBT does check downstream databases for criteria such as facilities availability, the FOC is put into "jeopardy" status, rendering the electronic FOC meaningless.
4. Specifically, for orders submitted by NEXTLINK to SWBT in January, for the Dallas market, NEXTLINK received **** FOCs through EDI and SWBT later sent jeopardy notices for **** of those orders. For orders submitted by NEXTLINK to SWBT in January, for the Houston market, NEXTLINK received **** FOCs through EDI and SWBT later sent jeopardy notices for **** of those orders.
5. In total for orders submitted by NEXTLINK to SWBT in January for Texas, NEXTLINK received **** FOCs through EDI and SWBT later sent jeopardy notices for **** of those orders.
6. Based on this data, 12.76% of the orders for which NEXTLINK received initial EDI FOCs in January were later put into jeopardy status. This means that almost 13% of the time NEXTLINK must return to its new customer and revise a promised due date. Not only does this impair our credibility with the customer, it also causes costly rework for NEXTLINK and creates additional administrative burdens.

7. In addition to the problems occurring related to the return of FOCs, SWBT has implemented a cumbersome manual process related to the provision of 2733 business records, which provides CSR (customer service record) information for customers with greater than 100 lines. Instead of providing a timely returned 2733 CSR by fax, as was the previous process, containing critical information about the end user's service, SWBT now seeks to return the information to NEXTLINK by regular U. S. Mail. NEXTLINK also understands that to obtain this information, coordination is required between two different SWBT offices in different cities, and NEXTLINK is not allowed to contact the office that actually provides the 2733 directly. At this time, SWBT does not have an electronic process to provide these records.
8. SWBT's delay in providing an accurate paper copy by fax, or an accurate electronic version, essentially prevents CLECs from providing timely bids. NEXTLINK has even been required to have customers contact their own SWBT account representatives to request an accurate and timely copy. Accurate and timely provision of 2733 records are essential to CLECs if they want to provide timely service to end users with the same features and functions that the customer requests."

This concludes my affidavit.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on _____, 2000.

Lea J. Barron
Manager, Provisioning
NEXTLINK Texas, Inc.

State of Texas
County of Dallas

Subscribed and sworn to before me

this ____ day of _____, 2000.

Notary Public

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served on this 23rd day of February, 2000 by hand delivery on the following:

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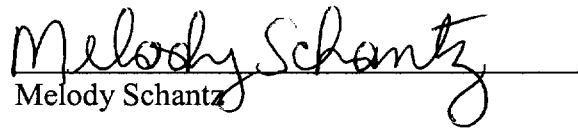
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